U.S. Department
of Transportation
**Federal Aviation
Administration**

JAN 30 2007

Mark W. Atwood
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Washington, D.C. 20036

Dear Mr. Atwood:

This responds to your request for an interpretation, dated August 24, 2006, regarding the Federal Aviation Administration's (FAA) final rule on Hazardous Materials Training (70 FR 58796, October 7, 2005). You state that the *ad hoc* nature of USA Jet's business model prevents advance hazardous materials training of individuals who might, or might not, provide contract ground handling services. You ask whether the activities of contract ground personnel used by USA Jet at outlying airports qualify as "handling," "loading" and "unloading," which you characterize as the type of functions that would require hazardous materials training under the October 7, 2005, rule. You argue that the October 7, 2005, final rule on Hazardous Material Training does not define the terms "loading, unloading and handling" but that Part 175 Subpart B (49 CFR Part 175.75 et seq.) makes clear that these functions involve complex technical issues.

You state that ground-handlers play a different role in USA Jet's operation than the common role of ground-handlers. You explain that USA Jet's mode of operation, or business model, is to be a self-contained, traveling HAZMAT acceptance aircraft, relying on no one else to assure the regulatory compliance of cargo presented to the aircraft. You state that USA Jet's flight crewmembers perform each and every one of the 49 CFR Part 175 functions. Further, USA Jet trains its flight crewmembers to perform all of the acceptance, loading and handling functions. All of the functions that require any knowledge, training, judgment or discretion - such as acceptance, inspection, filling out required paperwork, arranging the placement of the cargo aboard the aircraft - are performed by USA Jet crews. The contract ground personnel are needed only for physically lifting the boxes on to, and off of, a forklift or belt loader, and operating those machines. You maintain that the contract ground personnel who are the subject of your inquiry perform a function that does not require knowledge about hazardous materials and/or the exercise of judgment in that area.

We assume for purposes of this response that by outlying airports, you do not mean foreign locations and are not asking about the limited foreign location exception in 14 CFR 121.1005(f). We also assume that your request for an interpretation concerns the Hazardous Material Training Requirements of new 14 CFR part 121, subpart Z and not part 135. Finally, we assume that USA Jet is a will carry hazardous materials carrier.

14 CFR part 121 subpart Z prescribes the requirements applicable to each certificate holder for training each crewmember and person performing or directly supervising any of the following job functions involving any item for transport on board an aircraft: acceptance, rejection, handling, storage incidental to transport, packaging of company material or loading. 14 CFR section 121.1001. "Loading, and handling" are job functions involving any item for transport on board an aircraft.

Although you characterize "unloading" as a covered job function that requires training under the rule, "unloading" is not a job function that is covered by the rule. The FAA proposed unloading as one of the covered job functions in 121.801 (adopted as 121.1001) and 135.501. "Unloading" was removed from the final rule because it is not a job function that needs to be addressed through the FAA's hazmat training program. Since the item is being removed from the aircraft it would not pose a danger to the aircraft. However, "(i)f an item is subsequently loaded on to an aircraft, a trained person would have to perform the loading function." (70 FR 58796, 58797-58798, October 7, 2005).

The FAA regulations that prescribe hazmat training for air carriers and commercial operators conducting operations under part 121 or part 135 were first adopted over 25 years ago. The terms "loading" and "handling" have been a part of the FAA's hazardous materials scheme of regulations since at least 1973. In 1973, when amending 14 CFR section 121.401 and creating 121.433a, the FAA stated, "(o)ther comment(ers) requested some clarification of which personnel of the carrier are required to be trained. As proposed, the regulations adopted herein require training for those persons having duties and responsibilities for the shipment during flight, and those ground personnel who handle it for the purpose of preparing it for shipment, loading it on the aircraft, and unloading it from the aircraft." (38 FR 14915, June 7, 1973) The regulatory language codifying that portion of the preamble discussion became, in part, the "assigned duties for the carriage and handling of dangerous articles" (14 CFR section 121.401) and the "assigned duties and responsibilities for the handling or carriage of dangerous articles ." (14 CFR section 121.433a.) The terms loading and handling continue to have this same meaning in 14 CFR part 121 subpart Z.

While compliance with 49 CFR part 175.75, subpart B may, involve complex technical judgments, discretion, knowledge and training, as you argue, that does not mean that loading and handling are complex technical job functions in the FAA's hazardous materials regulation.

In the final rule on Hazardous Materials Training, the FAA considered specific comments about how to handle a person who is not trained at a departure or destination point that helps load an aircraft under the supervision of a flight crewmember. One commenter, Ameristar, stated that an entire initial training program is not practical for a person that may be loading only one piece of freight (i.e., a seat belt pretensioner, Class 9 (UN3268)) using a forklift on a one-time basis for an operator. Ameristar also noted that there were no provisions for contract employees in the FAA's proposed rule. (70 FR 58803-58804, October 7, 2005).

In 2006, the FAA adopted an exception allowing a person (either a new hire or someone who is performing a new job function) to perform a job function involving storage incidental to transport or loading of items on an aircraft for transport, provided the person is under the direct visual supervision of another properly trained employee authorized to directly supervise him or her. The exception is only valid for 30 days, and is contingent on the certificate holder complying with the recordkeeping requirements in 121.1007(b) and 135.907(b) After that time period; the individual must receive the required training. (70 FR 587996, 58804, October 7, 2005).

In response to your request for an interpretation, that means if a worker, (contractor, ad hoc worker for the day, direct airline employee, or operator employee), loads or handles hazmat, he must be trained in that job function unless the 30 day exception in the new regulations applies.

You also maintain that the role of ground personnel in USA Jet's operations is comparable to that of the drivers for Fed Ex and UPS. You state that those companies commented on the FAA's proposed Hazardous Material Training Rule stating that "their drivers – even though they handle hazmat packages- should not be required to undergo training, and that if they were, the costs of the additional training time would be enormous with no additional safety benefit." The preamble to the Final Rule on Hazardous Material Training, October 7, 2005, indicates that the comments from Fed Ex and UPS were different than what you interpret them to have been in your letter. The companies were concerned that the FAA's proposals in the notice of proposed rulemaking were so broad that, literally interpreted, they could require training of drivers in the companies ground operations. (70 FR 587996, 58801.) The FAA responded that, "(t)he key to determining who to train is to delineate which party is responsible for accepting a package for air transportation. *** If a part 121 or part 135 operator's truck drivers are accepting property for air transportation, they must be trained in accordance with this rule. If another employee performs that job function for the part 121 or part 135 operator, then the truck driver would not have to be trained in accordance with this rule." (70 FR 58796, 58801, October 7, 2005.) Although the example in the preamble dealt with a driver "accepting" hazmat material for air transportation, the same result would occur if the driver was responsible for any of the job functions listed in 14 CFR 121.1001(a)(1) including handling and loading hazardous materials. In either example, if the truck driver would not be accepting, handling or loading hazardous materials, another person, trained in accordance with the final rule, would perform that job function instead of the truck driver. In the case of USA Jet, if the contract cargo-handler used by USA jet does not accept, reject, handle, store incidental to transport, package company material or load any item for transport on board an aircraft being operated by USA Jet, then that person does not have to be trained in accordance with the regulations. (70 FR 58796, October 7, 2005).

This interpretation was prepared by Cecile O'Connor, Attorney, Operations Law Branch. It was coordinated with the Manager of Security and Hazardous Materials Office of Hazardous Materials at FAA Headquarters. Any additional questions concerning the hazardous materials training regulations or policy should be directed to the staff of that office at (202) 267-9864. We hope that this response has satisfactorily addressed your inquiry.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel
for Regulations, AGC-200